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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1047

ASSOCIATED HOSPITAL SERVICE CORPORATION OF MASSACHUSETTS, PETITIONER

v.

THOMAS B. HASSETT, FORMER ACTING COLLECTOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 34–37) is reported in 37 F. Supp. 822; that of the Circuit Court of Appeals (R. 51–61) is not yet officially reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 4, 1942. (R. 61.) The petition for a writ of certiorari was filed March 17, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Is the taxpayer exempt from tax under Title VIII of the Social Security Act as a "charitable" corporation within the meaning of Section 811 (b) (8)?

STATUTE INVOLVED

Social Security Act, c. 531, 49 Stat. 620:

> TITLE VIII—TAXES WITH RESPECT TO EMPLOYMENT.
>
> * * * * *
>
> SEC. 804. In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him after December 31, 1936, with respect to employment (as defined in section 811) after such date: (42 U. S. C., sec. 1001.)
>
> * * * * *
>
> SEC. 811. When used in this title—
>
> * * * * *
>
> (b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—
>
> * * * * *
>
> (8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals,

> no part of the net earnings of which inures to the benefit of any private shareholder or individual. (42 U. S. C., sec. 1011.)

STATEMENT

The facts as stipulated (R. 6–32), and as found by the District Court (R. 34–37), may be summarized as follows:

The taxpayer is a corporation organized under the laws of Massachusetts. Its charter, which became effective as of March 11, 1937 (R. 11), stated that it was organized for the following purposes (R. 10):

> To establish, maintain and operate a non-profit hospital service plan, whereby hospital care may be provided by this corporation, or by a hospital with which it has a contract for such care and which is maintained by the Commonwealth or a political subdivision thereof, or maintained by a corporation organized for hospital purposes under the laws of the Commonwealth, or such other hospitals as shall be designated by the Commissioner of Public Welfare, to such of the public who become subscribers to said hospital service plan, under a contract which entitles each subscriber to certain hospital care; * * *.

The corporation has three classes of members, consisting of voting members, members at large, and participating hospital members. The voting members of the corporation consist of the Trustees and Executive Committee of the Hospital Council

of Boston, Massachusetts Hospital Association, Boston Chamber of Commerce, Associated Industries of Massachusetts, Community Federation of Boston, Council of Social Agencies, and six medical societies. Members at large consist of such individuals, associations, firms or corporations as are elected by a vote of a majority of the board of directors of the taxpayer and have such voting rights, if any, as may be conferred upon them by the board of directors. (R. 12–13.)

The affairs, property and business of the corporation are managed by the board of directors, consisting of not less than seven nor more than eleven directors, elected by the voting members. The board of directors is made up of persons the majority of whom are directors or trustees of hospitals designated in Chapter 176A, Section 1, of the General Laws of Massachusetts. (R. 16.)

Under its plan of operation, the taxpayer entered into contracts with such individuals as desired to become subscribers. For the regular payment of fixed sums of money specified hospital services were to be rendered to such subscribers, or to certain members of their families. (R. 30B, 30C, 32A.)

In order to furnish such services, the taxpayer contracted with various hospitals whereby, under a fixed schedule of rates, the hospitals agreed to furnish the designated services. As a part of the consideration for the contract the hospitals agreed that in cases of war, public disaster, general epidemic, or other conditions occasioning demand for

hospital care beyond the ability of the taxpayer to pay for at established rates, they would accept a "pro rata deduction." (R. 29, 30A.)

During the year 1939, such deductions were made to the extent of 20% of the bills rendered for services to private and semi-private cases discharged during the months of March and April, 1939.[1] (R. 7, 31, 45.)

From the organization of the taxpayer on March 11, 1937, through December 31, 1940, the taxpayer received earned income of $3,725,538.18, spent $527,735.72 for administration and $2,746,583.70 for hospitalization. (R. 7–8.)

On September 14, 1939, the taxpayer paid $220.68 as taxes for the year 1937 under Title VIII of the Social Security Act (R. 8), and thereupon brought this suit for refund. It based its right to repayment on the ground that it was organized under Chapter 176A of the General Laws of Massachusetts, as added by Chapter 409 of the Acts of 1936. These laws provided that every corporation subject to the chapter should be declared to be a charitable and benevolent corporation and its property exempt from state, county, district and municipal taxes. The taxpayer contended that such declaration was conclusive; that it was a corporation organized and operated exclusively for

[1] The 20% deduction from the bills of the discharged patients for March and April was later repaid to the hospitals in full. (R. 45.)

charitable purposes, no part of the net earnings of which inured to the benefit of any private stockholder or individual for purposes of the tax involved. (R. 8–9.)

The District Court sustained the taxpayer's position (R. 34–37), but the Circuit Court of Appeals reversed, one judge dissenting (R. 51–61).

ARGUMENT

The decision of the court below is not in conflict with any other decision and there is no basis for invoking this Court's jurisdiction to determine whether the particular facts of this case bring petitioner within the statutory exemption. The decision below is sound, and even the dissenting judge declared that "the case must be conceded to be a close one". (R. 58.)

1. The ultimate question presented is not whether petitioner is a charitable corporation for tax statutes generally, nor whether it has been designated a charitable corporation by a Massachusetts statute (cf. *United States* v. *Pelzer,* 312 U. S. 399, 402–403), but rather whether it is a charitable corporation under the Social Security Act. The Social Security Act itself is a statute embodying broad social policy, and it should not lightly be assumed that Congress intended to deny the benefits of that Act to employees of such an organization as is here involved. Petitioner's funds are not derived from charitable contributions, and the payment of a fee is an indispensable condition before its members

may obtain the benefit of medical services or hospitalization which petitioner procures for them. As pointed out by the court below, petitioner's enterprise "is essentially a business arrangement under which a group of people have banded themselves together to purchase at rates as low as possible hospital care in the event of sickness or accident." (R. 54.) The facts of this case thus distinguish it from the other decisions relied upon by petitioner, wholly apart from the differences in the statutes involved.

2. Nor is the result affected by the fact that Congress incorporated a similar organization for the District of Columbia known as "Group Hospitalization, Inc.", characterizing it as charitable. Act of August 11, 1939, c. 698, 53 Stat. 1412.

Unlike the Social Security Act, the Group Hospitilization Act was, in effect, a private bill. It was not referred to the House Ways and Means Committee or the Senate Finance Committee, though these are the Committees that normally consider federal tax legislation. Instead it was referred to the Committees on the District of Columbia. Cong. Record, Vol. 84, Part 5, p. 5408, and Part 9, p. 9911. The Committee Reports themselves throw little light upon the Congressional purpose, since they do little more than state, in condensed form, the substance of the bill. They do show, however, that the bill received the approval of the Commissioners of the District of Columbia and the Bureau of the Budget, indicating that the

bill in question was considered to involve a purely local question. H. Rep. No. 1247, 76th Cong., 1st Sess.; S. Rep. No. 1012, 76th Cong., 1st Sess.

Moreover, at the time the Group Hospitalization Act was being considered by Congress, it had under consideration various amendments to the Social Security Act. These amendments broadened the exemptions of Section 811 (b) to include certain types of organizations which had theretofore failed to qualify as charities. The amendments became law (c. 666, 53 Stat. 1360) only one day before the Group Hospitalization Act, and if Congress had intended to include such organizations within the Section 811 (b) exemption, it seems reasonable to suppose that it would have so declared.

CONCLUSION

The decision below is correct. There is no conflict. The petition should be denied.

Respectfully submitted.

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